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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,901	10/18/2001	Jacqueline Claire Drane	AUS920010864US1	7308

7590  
Mr. Volel Emile  
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Austin, TX 78720-2170

EXAMINER

CHAVIS, JOHN Q

ART UNIT	PAPER NUMBER
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2191

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/981,901

Applicant(s)

DRANE ET AL.

Examiner

John Chavis

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kullick et al. 5,732,275.

#### **THE CLAIMS:**

1. (currently amended) A method of utilizing a software product, said software product including data on a fixed media, said method comprising the steps of:

determining whether the data on the fixed media contains outdated or errored data;

downloading an updated or non-errored network-based data to replace the outdated or errored data, if it is determined that the data on the fixed media contains outdated or errored data;

utilizing said data on said fixed media: and

replacing the outdated or errored data with the downloaded network-

#### **Kullick et al.**

See the title and the abstract of the invention.

See lines 8-10 of the abstract

See lines 9-10 of the abstract and col. 4 lines 20-36.

See col. 4 lines 37-58.

Note that outdated data (versions) are not replaced,

based data such that the outdated or errored data on the fixed media is not replaced but the outdated or errored data being used is replaced.

see col. 5 lines 20-32.

2. (Original) The method of Claim 1 wherein the network-based data is downloaded for use only when said data is about to be utilized.

See again col. 4 line 20-36.

3. (original) The method of Claim 2 further comprising the step of determining whether said software product contains outdated or errored data upon running said software product.

" " " " "  
Note that missing or deleted files referenced in col. 4 lines 37-49 may be considered as errored data; while, data That requires a new version is outdated data.

4. (original) The method of Claim 3 wherein the determining step includes the step of accessing said network to download tags of said outdated or errored data if there is outdated or errored data.

The control module is considered a tag, see col. 5 lines 9-32.

5. (Original) The method of Claim 4 wherein when an outdated or errored data is going to be used, a tag corresponding to said data is used to download the network-based data to temporarily replace the outdated or errored data.

See col. 5 lines 20-32 and col. 4 lines 20-36 for the "temporarily replace" feature; since, the original version remains and can be used later, see col. 5 lines 30-32.

In reference to claims 6-10, 11-15, and 16-20, see the rejections of claims 1-5 above. The stored method is considered the program product, see the reference to the fixed media of claim 1, in reference to claims 6-10 and the components of figure 5, which implements the method of claims 1-5 is considered to provide for the apparatus (claims 11-15) and the computer system (claims 16-20).

### **Conclusion**

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Chavis whose telephone number is (571) 272-3720. The examiner can normally be reached on M-Th, 7:30am-4:00pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jc



JOHN CHAVIS  
PATENT EXAMINER  
ART UNIT 2124